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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Plaintiff,

GALILEO SAN DIMAS, LP,
Defendant.

Plaintiff's Complaint

I. SUMMARY

1
2 1. This is a civil rights action by plaintiff Martin Vogel (referred to
3 hereinafter as “Vogel”) for discrimination at the building, structure, facility,
4 complex, property, land, development, and/or surrounding business complex
5 known as:

6 853 - 859 West Arrow Highway
7 San Dimas, CA 91773
8 (referred to hereinafter as “the Shopping Center”)

9 2. Vogel seeks damages, injunctive and declaratory relief, attorney fees
10 and costs against Galileo San Dimas, LP (referred to hereinafter as “Galileo San
11 Dimas”) pursuant to the Americans with Disabilities Act of 1990 (42 U.S.C. §§
12 12101 et seq.) and related California statutes.

13 II. JURISDICTION

14 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343
15 for ADA claims.

16 4. Supplemental jurisdiction for claims brought under parallel California
17 law—arising from the same nucleus of operative facts—is predicated on 28 U.S.C.
18 § 1367.

19 5. Vogel’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

20 III. VENUE

21 6. All actions complained of herein take place within the jurisdiction of
22 the United States District Court, Central District of California, and venue is
23 invoked pursuant to 28 U.S.C. § 1391(b), (c).

24 IV. PARTIES

25 7. Galileo San Dimas owns, operates, and/or leases the Shopping Center,
26 and consists of a person (or persons), firm, and/or corporation.

27 8. Vogel is a T-3 paraplegic as a result of a motorcycle accident in 1986
28 which left him unable to walk or stand and requiring the use of a wheelchair when

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1 traveling about in public. Consequently, Vogel is “physically disabled,” as defined
2 by all applicable California and United States laws, and a member of the public
3 whose rights are protected by these laws.

4 V. FACTS

5 9. The Shopping Center is a sales or retail establishment, open to the
6 public, which is intended for nonresidential use and whose operation affects
7 commerce.

8 10. While in the area, Vogel visited the Shopping Center to make some
9 purchases and encountered barriers (both physical and intangible) that interfered
10 with—if not outright denied—his ability to use and enjoy the goods, services,
11 privileges, and accommodations offered at the facility. To the extent known by
12 Vogel, the barriers at the Shopping Center included, but are not limited to, the
13 following:

- 14 • The disabled parking spaces have slopes and/or cross slopes that are
15 too steep, due mainly to an encroaching built-up curb ramp. Without
16 a level parking space, it is difficult for Vogel to unload/transfer from
17 a vehicle as his wheelchair rolls and/or a lift’s platform cannot sit
18 level; and,
- 19 • The access aisle has slopes and/or cross slopes that are too steep, due
20 mainly to an encroaching built-up curb ramp. Without a level access
21 aisle, it is difficult for Vogel to unload/transfer from a vehicle as his
22 wheelchair rolls and/or a lift’s platform cannot sit level.

23 These barriers prevented Vogel from enjoying full and equal access.

24 11. Vogel was also deterred from visiting the Shopping Center because
25 he knew that the Shopping Center’s goods, services, facilities, privileges,
26 advantages, and accommodations were unavailable to physically disabled patrons
27 (such as himself). He continues to be deterred from visiting the Shopping Center
28 because of the future threats of injury created by these barriers.

1 17. Galileo San Dimas discriminated against Vogel by denying “full and
2 equal enjoyment” and use of the goods, services, facilities, privileges or
3 accommodations of the Shopping Center during each visit and each incident of
4 deterrence.

5 Failure to Remove Architectural Barriers in an Existing Facility

6 18. The ADA specifically prohibits failing to remove architectural
7 barriers, which are structural in nature, in existing facilities where such removal is
8 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily achievable”
9 is defined as “easily accomplishable and able to be carried out without much
10 difficulty or expense.” *Id.* § 12181(9).

11 19. When an entity can demonstrate that removal of a barrier is not readily
12 achievable, a failure to make goods, services, facilities, or accommodations
13 available through alternative methods is also specifically prohibited if these
14 methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

15 20. Here, Vogel alleges that Galileo San Dimas can easily remove the
16 architectural barriers at Shopping Center without much difficulty or expense, and
17 that Galileo San Dimas violated the ADA by failing to remove those barriers, when
18 it was readily achievable to do so.

19 21. In the alternative, if it was not “readily achievable” for Galileo San
20 Dimas to remove the Shopping Center’s barriers, then Galileo San Dimas violated
21 the ADA by failing to make the required services available through alternative
22 methods, which are readily achievable.

23 Failure to Design and Construct an Accessible Facility

24 22. On information and belief, the Shopping Center was designed or
25 constructed (or both) after January 26, 1992—independently triggering access
26 requirements under Title III of the ADA.

27 23. The ADA also prohibits designing and constructing facilities for first
28 occupancy after January 26, 1993, that aren’t readily accessible to, and usable by,

1 individuals with disabilities when it was structurally practicable to do so. 42 U.S.C.
2 § 12183(a)(1).

3 24. Here, Galileo San Dimas violated the ADA by designing or
4 constructing (or both) the Shopping Center in a manner that was not readily
5 accessible to the physically disabled public—including Vogel—when it was
6 structurally practical to do so.¹

7 Failure to Make an Altered Facility Accessible

8 25. On information and belief, the Shopping Center was modified after
9 January 26, 1992, independently triggering access requirements under the ADA.

10 26. The ADA also requires that facilities altered in a manner that affects
11 (or could affect) its usability must be made readily accessible to individuals with
12 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an
13 area that contains a facility's primary function also requires adding making the
14 paths of travel, bathrooms, telephones, and drinking fountains serving that area
15 accessible to the maximum extent feasible. Id.

16 27. Here, Galileo San Dimas altered the Shopping Center in a manner that
17 violated the ADA and was not readily accessible to the physically disabled
18 public—including Vogel—to the maximum extent feasible.

19 Failure to Modify Existing Policies and Procedures

20 28. The ADA also requires reasonable modifications in policies,
21 practices, or procedures, when necessary to afford such goods, services, facilities,
22 or accommodations to individuals with disabilities, unless the entity can
23 demonstrate that making such modifications would fundamentally alter their
24 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

25 29. Here, Galileo San Dimas violated the ADA by failing to make
26 reasonable modifications in policies, practices, or procedures at the Shopping
27

28 ¹ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

Center, when these modifications were necessary to afford (and would not fundamentally alter the nature of) these goods, services, facilities, or accommodations.

30. Vogel seeks all relief available under the ADA (*i.e.*, injunctive relief, attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

31. Vogel also seeks a finding from this Court (*i.e.*, declaratory relief) that Galileo San Dimas violated the ADA in order to pursue damages under California's Unruh Civil Rights Act or Disabled Persons Act.

VII. SECOND CLAIM

Disabled Persons Act

32. Vogel incorporates the allegations contained in paragraphs 1 through 30 for this claim.

33. California Civil Code § 54 states, in part, that: Individuals with disabilities have the same right as the general public to the full and free use of the streets, sidewalks, walkways, public buildings and facilities, and other public places.

34. California Civil Code § 54.1 also states, in part, that: Individuals with disabilities shall be entitled to full and equal access to accommodations, facilities, telephone facilities, places of public accommodation, and other places to which the general public is invited.

35. Both sections specifically incorporate (by reference) an individual's rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

36. Here, Galileo San Dimas discriminated against the physically disabled public—including Vogel—by denying them full and equal access to the Shopping Center. Galileo San Dimas also violated Vogel's rights under the ADA, and, therefore, infringed upon or violated (or both) Vogel's rights under the Disabled Persons Act.

X. PRAYER FOR RELIEF

WHEREFORE, Vogel prays judgment against Galileo San Dimas for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that Galileo San Dimas violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.²
5. Interest at the legal rate from the date of the filing of this action.

DATED: December 31, 2015 DISABLED ADVOCACY GROUP, APLC

/s/ Scottlynn J Hubbard IV

SCOTTLYNN J HUBBARD IV
Attorney for Plaintiff

² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.
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